

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JEFFERY BAKER, JR.,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 2:06cv61-ID
)	
RUSSELL THOMAS, SHERIFF, <i>et al.</i> ,)	
)	
Respondents.)	

ORDER

On May 23, 2008, Petitioner filed a notice of appeal, which the court construes as containing a motion to proceed on appeal *in forma pauperis* and a motion for certificate of appealability. (Doc. No. 40.)

28 U.S.C. § 1915(a) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” In making this determination as to good faith, the court must use an objective standard, such as whether the appeal is “frivolous,” Coppedge v. United States, 369 U.S. 438, 445 (1962), or “has no substantive merit.” United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B. May 15, 1981) (per curiam). In addition, a certificate of appealability is necessary before a petitioner may pursue an appeal in a habeas corpus proceeding. See 28 U.S.C. § 2253(c). To mandate the issuance of a certificate of appealability, a petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see also Barefoot v. Estelle, 463 U.S. 880, 893 (1983).

Applying the foregoing standards, the court is of the opinion, for the reasons stated in the recommendation of the magistrate judge (Doc. No. 36), that Petitioner's appeal is without a legal or factual basis, and, accordingly, is frivolous and not taken in good faith. See Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam). Furthermore, the court finds that Petitioner has failed to make a substantial showing of the denial of a constitutional right.

Accordingly, it is CONSIDERED and ORDERED that Petitioner's motion to proceed on appeal *in forma pauperis* and motion for certificate of appealability be and the same are hereby DENIED and that the appeal in this cause is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 28th day of May, 2008.

/s/ Ira DeMent
SENIOR UNITED STATES DISTRICT JUDGE